

Appl. No. 10/626,947
Atty. Docket No. 9117M
Amendment dated November 22, 2005
Reply to Office Action of September 23, 2005
Customer No. 27752

Remarks

Status of the Claims

Claims 1 to 9 are pending in the present application. Claim 1 is amended to indicate that the level of colorant particles in the first phase or phases is greater than the level of colorant particles in the second phase or phases. The basis for this amendment is in the examples and on page 6, lines 17-21. For example, in examples I and II the first phase has 0.7% of colorant particles and the second phase has 0.3% of colorant particles. In example III the first phase has 0.5% of colorant particles and the second phase has 0.3% of colorant particles. Further, new claims 10 and 11 are added, the basis of which is on page 6, lines 17-21. No new matter is added.

35 USC Section 103 Rejection

The Examiner rejects claims 1 to 9 under 35 USC 103 over Stier (EP 076,563) herein "Stier" in view of Wong et al. (US Patent No. 6,315,986) herein "Wong".

The combination of Stier and Wong, however, does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of Applicant's claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) and MPEP 2143.03. Since independent claim 1 is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious as well. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Stier does not teach colorant particles nor does it teach the actual level of colorants present. Furthermore Stier does not teach the level of colorant particles in one striped dentifrice phase relative to the level of colorant particles in a second or different striped dentifrice phase.

Wong only teaches that the level of colorant particles may be from 0.01-5% by weight. Furthermore Stier does not teach the level of colorant particles in one striped dentifrice phase relative to the level of colorant particles in a second or different striped dentifrice phase, in the same dentifrice product. One advantage of the present invention is lower manufacturing cost through the use of conventional dentifrice packaging and tubes. Furthermore, in one embodiment, the present invention enables one of skill in the art to use one type of colorant particle to develop a contrasting striped dentifrice product by using a lower level of the colorant particle in the paste phase (opacified phase) and a

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higher level of the colorant particle in the transparent phase. Fewer ingredients are therefore needed. Thus lower costs and simplified processing and manufacturing are achieved.

Therefore the combination of Stier and Wong does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of Applicant's claim limitations, in particular neither of the references teach the level of colorant particles of one striped phase relative to the other striped phases.

Conclusion

In view of the above facts and arguments, the Examiner is respectfully requested to reconsider and withdraw all of the rejections. In view of the above, Applicants respectfully request reconsideration of the application and allowance of all of the claims.

Respectfully submitted,

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